a *remittitur* is proper, an appellate court may direct that the prevailing party remit a portion of the damages recovered or have his judgment reversed.[28]

THE RIGHT OF A COMMON CARRIER TO LIMIT ITS LIABILITY.—The question as to the right of a common carrier to limit its liability in interstate shipments for loss or damage to merchandise and baggage has given rise to two distinct lines of decisions. One holds that this liability may be limited by a reasonable contract with the shipper based upon the value of the thing carried,[1] while the other holds that any such contract is invalid on grounds of public policy.[2] In 1906 Congress, in order to remedy this lack of uniformity in the law, passed the Hepburn Amendment to the Interstate Commerce Act.[3] Since the passage of this amendment two important questions have arisen as to the interpretation of section 20 of the same, known as the Carmack Amendment.[4] The first is as to the meaning of the last three lines of this section: "Provided, that nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law." Does this continue in force the common law and the local State laws on the subject? In a Nebraska case [5] it was held, that the shipper's right, according to the local State law, to recover the full amount of his loss from the carrier, regardless of a stipulation which limits the carrier's liability, is not affected by the Carmack Amendment. And the same was held in an Iowa case.[6] In 1912 the question came before the United States Supreme Court and it overruled the decisions in the two cases *supra* holding, that the Carmack Amendment gives Congress

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[28] Mills *v.* Scott, 99 U. S. 25, 25 L. Ed. 294.

[1] Oppenheimer *v.* U. S. Express Co., 69 Ill. 62; Louisville & N. Ry. Co. *v.* Sherrod, 84 Ala. 178, 4 So. 29; Richmond & D. Ry. Co. *v.* Payne, 86 Va. 481, 10 S. E. 749.

[2] Grogan *v.* Adams Express Co., 114 Pa. St. 523, 7 Atl. 134; Baltimore, etc., Ry. Co. *v.* Ragsdale, 14 Ind. App. 406, 42 N. E. 1106.

[3] 34 Stat. 584, c. 3591 (U. S. Comp. St. Supp. 1911, p. 1288).

[4] Section 20, in so far as it relates to the carriage of merchandise and baggage, is as follows:

"That any common carrier, railroad, or transportation company receiving property for transportation from a point in one state to a point in another state shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it, * * * and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability here imposed: Provided, that nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law."

[5] Latter *v.* Chicago Ry. Co., 97 C. C. A. 198, 172 Fed. 850.

Betus *v.* Chicago Ry. Co., 150 Ia. 252, 129 N. W. 962.

exclusive control over the subject and that it supersedes all regulations and policies of particular States.[7]

The next question arising under this amendment is as to the interpretation of that section of it reading: "and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability here imposed." Does this forbid the carrier to enter, under all circumstances, into contracts limiting its liability? The United States Supreme Court has answered that a limitation of liability based upon an agreed value to obtain a lower rate has no tendency to exempt from liability, and a provision in a bill of lading or a receipt to such effect does not violate the Carmack Amendment.[8]

The determination of these two questions by the Supreme Court seems to have settled all disputes as to the right of a common carrier to limit its liability—it can do so if the same be based upon an agreed value, and no State can deprive it of this right. But only in the last few months another question has arisen. Do these decisions of the Supreme Court apply to baggage cases wherein the passenger does not know that the charge made is based on the value of the baggage; in other words, where there is no agreement between the parties as to valuation? This point has arisen in the two recent cases of *Ford* v. *Chicago, etc., Ry. Co.* (Minn.), 143 N. W. 249, and *Barstow* v. *New York, etc., Ry. Co.* (N. Y.), 143 N. Y. Supp. 983. In both the limitation as to baggage was clearly stated on the baggage receipt and on the passenger's ticket, was posted on the station walls, and filed with the Inter-State Commerce Commission. The passenger, however, was ignorant of the same and his attention was not called to it. Both courts held, that the cases were directly in point with the Supreme Court cases and that therefore since the Supreme Court had spoken they must follow its decision. In so deciding it seems that they failed to note the distinction between the merchandise cases before the Supreme Court and the baggage cases before them. In one of the former the consignor himself testified that he knew that if the value had been declared the express rate would have been higher, and that for that reason he said nothing.[9] In another the consignor made the valuation himself by signing the bill of lading which read, "and the said shipper represents and agrees that his said live stock do not exceed in value

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[7] Adams Express Co. *v.* Croninger, 226 U. S. 491, 33 Sup. Ct. 148. See also, cases cited, *infra*, footnote 8.

[8] Adams Express Co. *v.* Croninger, *supra*· Wells Fargo & Co. *v.* Neiman-Marcus Co., 227 U. S. 469, 33 Sup. Ct. 267; Kansas City Southern Ry. Co. *v.* Carl, 227 U. S. 639, 33 Sup. Ct. 391; Missouri, etc., Ry. Co. *v.* Harriman Bros., 227 U. S. 657, 33 Sup. Ct. 397. See, also, 13 I. C. C. Rep. 550, where the Inter-State Commerce Commission ruled that, "the stipulation is valid, even when the loss is due to the carrier's negligence, if the shipper has himself declared the value, expressly or by implication, the carrier accepting the same in good faith as the real value and the rate of freight being fixed in accordance therewith."

[9] Wells Fargo & Co. *v.* Neiman-Marcus Co., *supra.*

those prices," referring to the schedule set out immediately before that declaration.[10] And in the other two the shipper must have known of the contract of limitation clearly set out in the bill of lading.[11] As was stated by the court, "the liability may be limited or qualified by special contract with the shipper," and "the ground upon which the shipper is limited to the valuation is that of estoppel." [12] In the baggage cases, however, the shipper knew nothing of the limitation placed upon the value of the baggage, and the mere receipt of the baggage check and ticket containing an arbitrary statement as to the amount of the carrier's liability, does not amount to a contract between the parties, nor does it give rise to an estoppel.[13] There is then a distinction between these two sets of cases, and the courts of New York and Minnesota would seem to have overlooked it in holding that the recent decisions before the Supreme Court applied to the cases before them. In the former there was an agreement between the parties as to the extent of the limitation, in the latter there was no agreement at all. What the Supreme Court will do with such cases when they come before it is not known, but the better view, as supported by the weight of authority, is that, in the absence of an agreement between the carrier and passenger as to a limitation of liability based upon value, or a representation by the passenger as to the value of his baggage, or a knowledge on his part that the price of a ticket is based upon the value of the baggage carried, the carrier is liable for the actual value if the baggage is lost by its negligence or fault.[14]

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[10] Missouri, etc., Ry. Co. *v.* Harriman Bros., *supra.*

[11] Adams Express Co. *v.* Croninger, *supra;* Kansas City Southern Ry. Co. *v.* Carl, *supra.*

[12] Missouri, etc., Ry. Co. *v.* Harriman Bros., *supra.*

[13] Ginn *v.* Ogdensburg Co., 29 C. C. A. 522, 85 Fed. 985; The Majestic, 166 U. S. 375, 17 Sup. Ct. 597.

[14] Kansas City, etc., Ry. Co. *v.* Simpson, 30 Kan. 645, 46 Am. Rep. 104; Coupland *v.* Housatonic Ry. Co., 61 Conn. 531, 15 L. R. A. 534; O'Malley *v.* Great Northern Ry. Co., 86 Minn. 380, 90 N. W. 974; Ginn *v.* Ogdensburg Co., *supra;* The Majestic, *supra.*